

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

SCOTT WILKINSON, et al.,

## Plaintiffs,

V.

RICK TORRES, et al.,

## Defendants.

CASE NO. C08-5281BHS

**ORDER GRANTING MOTION  
FOR SUMMARY JUDGMENT  
AND MOTIONS FOR BILL OF  
COSTS**

This matter comes before the Court on the Ninth Circuit’s Mandate in this action (Dkt. 82), Defendant City of Vancouver’s (“City”) unopposed motion for summary judgment (Dkt. 81), and Defendants John Key’s (“Key”) and Rick Torres’s (“Torres”) unopposed motions for bill of costs (Dkts. 84 & 88). The Court has considered the pleadings filed in support of the motions and the remainder of the file and hereby grants the motions for the reasons stated herein.

On July 6, 2010, the Ninth Circuit issued an opinion and order reversing this Court’s denial of Torres’s motion for summary judgment based on qualified immunity (Dkt. 63) and remanded the case with instructions to this Court to grant Torres’s motion. Dkt. 75. On September 21, 2010, the Ninth Circuit issued the amended mandate on its opinion and order. Dkt. 82. Accordingly, the Court concludes that Torres is entitled to summary judgment. The Court also concludes that Defendant Brian Martinek is entitled to summary judgment as he was sued by Plaintiffs in his capacity as Chief of Police of the City based on the acts of Torres and Key. *See* Dkt. 1 at 3. Because all claims have been

1 dismissed against Key and Torres, Plaintiffs claims against Martinek should also be  
 2 dismissed.

3 On September 17, 2010, Defendant City of Vancouver (“City”) filed a motion  
 4 seeking summary judgment based on the Ninth Circuit’s order. Dkt. 77. The City  
 5 maintains that because the Ninth Circuit concluded that Torres did not violate any of  
 6 Plaintiffs’ constitutional rights and instructed the Court to grant Torres’s motion for  
 7 summary judgment, there can be no liability against the City. Dkt. 81 at 2. Plaintiffs did  
 8 not file a response to the motion. Having considered the City’s motion and Plaintiffs’  
 9 lack of response thereto, the Court concludes that the City is entitled to summary  
 10 judgment. *See* Local Rule CR 7(b)(2) (stating that “[i]f a party failes to file papers in  
 11 opposition to a motion, such failure may be considered by the court as an admission that  
 12 the motion has merit”). In addition, having considered Key’s and Torres’s motions for  
 13 bill of costs and Plaintiffs’ lack of responses thereto, the Court concludes that the motions  
 14 should be granted. *See id.*

15 Therefore, the Court hereby **ORDERS** as follows:

16 (1) Torres is entitled to summary judgment and Plaintiffs’ claims against him  
 17 are **DISMISSED with prejudice**;

18 (2) Martinek is entitled to summary judgment and Plaintiffs’ claims against him  
 19 are **DISMISSED with prejudice**;

20 (2) The City’s motion for summary judgment (Dkt. 77) is **GRANTED** and  
 21 Plaintiffs’ claims against the City are **DISMISSED with prejudice**;

22 (3) Key’s and Torres’s motions for bill of costs (Dkt. 84 & 88) are  
 23 **GRANTED**, and costs are taxed against Plaintiffs in the amount of \$ 2053.67.

24 DATED this 12th of November, 2010.

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 BENJAMIN H. SETTLE  
 United States District Judge